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In re Application of
KANG

Application No.: 09/889,327

PCT No.: PCT/KR00/00026

Int. Filing Date: 14 January 2000

Priority Date: 14 January 1999

Attorney Docket No.: 60034-301801

For: RECOMBINANT ENZYME WITH
EXCELLENT D-AMINO OXIDASE
ACTIVITY AND PRODUCTION
THEREOF

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition to Withdraw Holding of Abandonment of Application Under 37 C.F.R. 1.181(a)" filed in the United States Patent and Trademark Office (USPTO) on 31 July 2002.

BACKGROUND

On 14 January 2000, applicant filed international application PCT/KR00/00026, which claimed priority of an earlier application filed 14 January 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 20 July 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 14 July 2001.

On 11 July 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application and an unexecuted combined declaration and power of attorney.

On 21 August 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) and a NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION (Form PCT/DO/EO/917) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and

international filing date. In addition, applicant was advised of the need to provide payment of the \$130.00 surcharge for providing an oath or declaration later than thirty months from the priority date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 28 May 2002, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) and a NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION (Form PCT/DO/EO/917) mailed 21 August 2001 within the time period set therein and that above-identified application was abandoned as to the United States.

On 31 July 2002, applicant responded with the present petition accompanied by an executed combined declaration and power of attorney, a copy of a transmittal letter dated 19 September 2001 and a return postcard receipt with a 04 October 2001 USPTO date stamp which lists the attorney docket number, title and applicant and identifies the items to be filed as a "Transmittal for Declaration, Power of Attorney; and Executed Declaration, Power of Attorney."

DISCUSSION

A review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 21 August 2001, addressed to the mailing address provided in the international application (no new correspondence address was provided in the transmittal letter for entry into the national stage in the United States submitted 11 July 2001). It is noted that the transmittal letter purportedly filed 04 October 2001 and return postcard identified the application as "09/889,237." A search of that file did not reveal the filed papers therein. However, the evidence filed with the petition, namely the date stamped postcard receipt and information contained therein is convincing that a response including a combined declaration and power of attorney was filed on 04 October 2001. In addition, the filed declaration contained the correct application number of 09/889,327. Thus, it is appropriate to withdraw the holding of abandonment.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

As authorized, the \$65.00 small entity surcharge for providing an executed oath or declaration later than thirty months from the earliest claimed priority date will be deducted from Deposit Account No.: 50-2207

The NOTIFICATION OF ABANDONMENT mailed on 28 May 2002 is hereby **VACATED**.

The application has an international filing date of **14 January 2000** under 35 U.S.C. 363 and a date of **04 October 2001** under 35 U.S.C. 371(c).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision, that is, for mailing of a filing receipt and a NOTIFICATION OF ACCEPTANCE OF APPLICATION (Form PCT/DO/EO/903) which identifies a date of **04 October 2001** under 35 U.S.C. 371(c).



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